

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL HILL, }
Plaintiff, }
v. } Civil Action No. 03-323 Erie
JOHN LAMANNA, et al., }
Defendants. }

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on October 7, 2003, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 89], filed on July 31, 2006, recommended that Defendants' motion to dismiss or, in the alternative, motion for summary judgment [Doc. No. 82] be granted in part and denied in part. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Objections were filed by Defendants on August 9, 2006 [Doc. 91]. After de novo review of the motion and documents in the case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 18th day of August, 2006;

IT IS HEREBY ORDERED that the Defendants' motion to dismiss or, in the alternative, motion for summary judgment [Doc. No. 82] is GRANTED in part and DENIED in part. Specifically, Defendants' motion with respect to Plaintiff's FTCA claim regarding silica dust exposure is GRANTED and such claim is dismissed for lack of subject matter jurisdiction based upon Plaintiff's failure to exhaust his administrative remedies; Defendants' motion is DENIED with respect to Plaintiff's FTCA claim regarding negligent dental care; Defendants' motion is DENIED with respect to Plaintiff's *Bivins* claim regarding silica dust exposure; and Defendants' motion is

DENIED with respect to Plaintiff's *Bivins* claim regarding dental care as to alleged deliberate indifference stemming from the lengthy delay in medical treatment, and is GRANTED as to the actual tooth extraction as Defendants were not deliberately indifferent to Plaintiff's medical needs.

The Report and Recommendation [Doc. No. 89] of Magistrate Judge Baxter, filed on July 31, 2006, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge